

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
June 28, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, June 28, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair  
J.P. Boucher, Clerk  
Mariellen MacKay  
Rob Shaw  
Kathy Vitale

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

1. **Stephen J. & Andrea M. Curtis (Owners) 213 Harris Road (Sheet C Lot 501) requesting special exception to allow an accessory (in-law) dwelling unit within existing house. R9 Zone, Ward 9. [TABLED FROM 6-14-16 MEETING]**

Voting on this case:

Gerry Reppucci  
Kathy Vitale  
J.P. Boucher  
Mariellen MacKay  
Rob Shaw

**MOTION** by Mr. Reppucci to take the case off the Table.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

Stephen Curtis, 213 Harris Road, Nashua, NH. Mr. Curtis said that they presented this case two weeks ago, and the Board had some questions and it was tabled. He said that they met with Mr. Falk and went over the case.

Mr. Falk said that they are fine with the size, and they will be using the unit for a relative, so everything meets the Ordinance.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Mr. Shaw to approve the special exception on behalf of the owner as advertised. Mr. Shaw stated that the use is listed in the Table of Uses, Section 190-32.

Mr. Shaw said that the use will not create undue traffic congestion or unduly impair pedestrian safety, there was a lot of discussion about traffic congestion, there was no mention or evidence of such.

Mr. Shaw said that the use will not overload public water, drainage or sewer or other municipal systems, it's all presently served.

Mr. Shaw said that by testimony, the applicant states that they will comply with the special regulations, and the use will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**2. Michael J. & Joanne L. O'Loughlin (Owners) 2 Shelton Street (Sheet B Lot 1305) requesting variance to encroach 5 feet into the 10 foot required right side yard setback to construct an attached 24'x32' garage. R9 Zone, Ward 9.**

Voting on this case:

Gerry Reppucci  
Mariellen MacKay  
J.P. Boucher

Kathy Vitale

Rob Shaw - Recused

Michael O'Loughlin, 2 Shelton Street, Nashua, NH. Mr. O'Loughlin said that the main reason for the request is for the maintenance of the cars in the driveway, and it would be nice to have a garage. He said that a standard garage is 24'x24', and this one will have an extra 8 feet of depth for storage.

**SPEAKING IN FAVOR:**

Mr. Falk said that he received a phone call from the owners of 4 Shelton Street, stating that they were in favor of the request.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Ms. Vitale to approve the variance application as advertised on behalf of the owner as advertised. Ms. Vitale said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, per testimony, is a 24' wide garage, a normal sized width, and it is a reasonable space and the location of the garage is in the best possible location.

Ms. Vitale said that the proposed use would be within the spirit and intent of the ordinance.

Ms. Vitale said that it will have no negative impact on surrounding properties, it is not contrary to the public interest, and substantial justice is served to the owner.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. Douglas A. & Dorothy A. Young (Owners) 6 Acacia Street (Sheet C Lot 1031) requesting variance to encroach 2 feet into the 30 foot required rear yard setback to construct an

**attached 10'x14' sunroom, with associated 6'x6' deck and 4'x4' landing. R9 Zone, Ward 5.**

Voting on this case:

Gerry Reppucci  
Kathy Vitale  
J.P. Boucher  
Mariellen MacKay  
Rob Shaw

Thomas Bloch, Morgan Exteriors, LLC. Mr. Bloch said that due to the size and shape of the lot, and placement of the house, it's very difficult to place the sunroom anywhere else. He said that it won't have any effect on the neighborhood, and it won't have any impact on the property values of the neighborhood, as there are other houses nearby that have sunrooms. He said that it is a three-season room and will protect them from mosquitos.

Mr. Boucher asked about the steps encroaching into the setback beyond the three-season room.

Mr. Falk said he didn't see an issue with the steps. He said that the deck portion isn't even in the setback.

Ms. Vitale said that it is a very minor encroachment into the setback, and it doesn't make sense to have them build the sunroom two feet shorter.

Mr. Shaw said that there are shallower and narrower lots in the neighborhood, and even the house appears to be set back a little bit more from the front than others, which leads this to being one of the more constrained properties here, and it's a pretty minor encroachment.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Mrs. MacKay to approve the variance application as advertised on behalf of the owner as advertised. Mrs. MacKay

said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the two foot setback encroachment is very minimal, and the house is constrained, and the addition for the sunroom is logical in the location it is proposed.

Mrs. MacKay said that the proposed use would be within the spirit and intent of the ordinance.

Mrs. MacKay said that it will have no negative impact on surrounding properties. She said it is not contrary to the public interest, and substantial justice is served to the owner.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**4. 436 Amherst LLC (Owner) 436 Amherst Street (Sheet H Lot 73) requesting the following: 1) variance to allow an electronic changing message sign; and, 2) to allow electronic changing message sign that would display symbols, graphics and images, where only three lines of text is permitted. AI Zone, Ward 2.**

Voting on this case:

Gerry Reppucci  
Kathy Vitale  
J.P. Boucher  
Mariellen MacKay  
Rob Shaw

Attorney Gerald Prunier, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier passed out a drawing to the Board. He said that the property abuts the property that was going to be used for Wal-Mart. He said that the property is surrounded by General Business and Highway Business. He said that the Airport Industrial was put in with the hope that there would be a lot of warehouses servicing the airport, and as it turns out, that's not the case. He said that there's no connection with this property and the airport. He said it really should be zoned something else, either Highway or General

Business. He said that the subject property abuts the General Business zone, so but for a few feet, this type of sign would be an allowed use.

Atty. Prunier said that electronic changing message signs are becoming more and more necessary for businesses. He said that they can change the message to put information out there. He said they can also attract tenants. He described some of the other EMC signs on Amherst Street. He said that these signs are becoming more important, and doesn't think they are properly addressed by the City. He said that the City should look at the sign ordinance, especially when it comes to EMC's.

Ms. Vitale asked what would take place in the EMC portion of the sign.

Atty. Prunier suggested that the sign company representative address this question.

Mr. Fred Pino, Optec Displays, 1700 S. De Soto Place, Ontario, CA. Mr. Pino said he is speaking on behalf of Classic Signs. He said that the EMC portion will have pictures of houses for sale for the real estate office in the building, and could have text/copy messages as well. He said that the remainder of the sign would have static messages, with lexan faces, and it would be internally lit.

Mr. Shaw asked about the time and rate that the message could change.

Mr. Pino said that 5 seconds is very generous for a rate of change in any established City, and they will adhere to this requirement.

Mr. Shaw said that the total area of the sign appears to be 120 square feet, and asked to confirm that.

Atty. Prunier agreed and stated that they're not looking for any other dimensional variances other than what is allowed, outside of the EMC. He said that the height is ok.

Mr. Reppucci said that the issue he has with this is that it would be allowed if it were a few feet away on the other property, as far as the electronic message sign. He said that the Legislative body has disallowed the graphics portion of it

in any zone in the City. He said that although they're an improvement and a benefit to the City, however, the legislators have said that they're not allowed in Nashua. He said if the Board approves it, they are legislating, which the Board cannot do. He said that this is compounded by the fact that most of the people who have these types of signs violate the ordinance.

Atty. Prunier said that is the reason why the Board is here, because the legislative body doesn't change as fast as the changing economy. He said that this is why the Board is here, to take care of these problems. He said that these signs are the future, these signs give people messages, and the legislature has not reacted, so it's up to this Board to take this case by case and see what they want to do with it. He said that this property is an island, in the middle of General Business and Highway Business. He said that things change, the economy changes, and the sign industry has changed. He said that there has been a major change in the electronic message signage industry over the past ten years.

Mr. Reppucci said that people should be approaching the legislative body to address this, to consider changing the ordinance, so instead of addressing this sign by sign, they should look at the big picture.

Mr. Shaw said that he was involved with the committee at the time the Code was revised, it was 11 or 12 years ago, but there could be an effort starting with an individual Alderman or the Planning & Economic Development Committee, and one of their roles is to look at this.

Mr. Boucher asked if there would be any video going on the sign, with constant movement.

Atty. Prunier said it would just be images.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Michael Milani, 21 Sunapee Street, Nashua, NH. Mr. Milani asked to clarify the size of the sign. He said it's pretty sizable. He said that there are already too many signs on the street, and

it's turning into urban blight. He said he's been rear-ended on Amherst Street, and this sign will be another distraction to drivers in the area.

Sherry Dutzy, 18 Swart Terrace, Nashua, NH. Mrs. Dutzy agreed that any additional message center signs on Amherst Street is a distraction.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Prunier said that texting and using cell phone while driving is illegal. He said that there are good and bad signs, but this one is a good sign. He said that people should look to the future with respect to these signs.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:**

No one.

Mr. Shaw said he could not support the second request, to have graphics, symbols and images on the sign. He said that perhaps the Code should be changed, or whether there's sufficient support for it, that can be looked at with an improved solution, but didn't see anything in this application compelling the Board to look beyond that hard line stance that the Code has. He said he'd be open to supporting the standard electronic message sign, given the proximity to the GB zone, and regarding the AI District, and how it's developed as it is. He said he's ok with just the standard EMC sign, because of the nature of the property and the location next to the GB Zone.

Mrs. MacKay said she doesn't have a problem with the request to allow the EMC sign displaying symbols, graphics and images. She agreed with Atty. Prunier, in that the times are changing, and this is real estate and real estate does better with showing a picture than just text, and the case should be heard on its merit on a case by case basis, and how laws get changed a lot is from the bottom up, not from the top down.

Mr. Reppucci said he appreciated Atty. Prunier's presentation, and agreed with a lot of what he said, but doesn't agree with the reason why this Board is here. He said that the Board's function is to look at a specific piece of property, with a specific application that is unique, and determine whether or not it deserves relief. He said that what they are asking for



is banned city-wide. He said that the legislature has said that this cannot be done in Nashua, and if he supports what he wants to support, he would be doing the cardinal sin of zoning, which is to legislate. He said that he believes that it's a myth that these signs are a distraction to drivers, as the Federal government has them all over on the highways, and Nashua Police has them out. He said what he finds the most distracting on the sign is not the EMC, but it's all the small panels. He said he can support the first variance, but won't support the second piece of this variance.

Ms. Vitale agreed, in that having every tenants name on the panels is tough when you're driving, and said she looks for the address and the building name, those are the two best ways to find a place, either here or in another City. She said that there have been a couple people testifying that the sign could be distractive, and some may say it's not, it is a distraction, you're going to look at and it'll catch your eye, just like a cat running across the street. She said she's ok with the first variance, and is hesitant to go with the second part of the request.

Mr. Boucher said he echo's Mr. Shaw, Mr. Reppucci's and Ms. Vitale's comments. He said he's in favor of these types of signs, when done correctly. He said that we're here to give relief, but how can we give relief to something that isn't allowed anywhere in the City, and said he can't support it. He said that these signs are good, and can be good, but said he can't support the second variance here, but would support the first variance.

**MOTION** by Mr. Reppucci to approve the first variance request in the application as advertised on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the Board finds that these signs have become common, and when they're used within the Code, they are an asset to the businesses in the community, and although they're not allowed in this specific zoning area, that function is allowed in the City and the Board finds that it is appropriate to allow it on this application.

Mr. Reppucci said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Reppucci said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, there was discussion from a couple people, but supporters of this motion find that it doesn't rise to the level that makes a reason to not support the first variance, and substantial justice is served to the owner.

Mr. Shaw said that since the property is in such close proximity to the GB zone, which helps to justify it as a reasonable request, thereby making it within the spirit and intent of the ordinance.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MOTION** by Mr. Reppucci to deny the second variance request in the application as advertised on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance, the Board finds that may or may not be true.

Mr. Reppucci said that supporters of this motion find that it is exactly contrary to the ordinances as they're written in the City of Nashua, as they're looking for a use that is not permitted anywhere in the City, and the Board feels that by granting it would be a legislative act, and that is beyond the scope of this Board, therefore, it is not within the spirit and intent of the ordinance.

Mr. Reppucci said that there was no testimony to property values one way or another. He said for being contrary to the public interest, that hasn't been taken into consideration with the change of graphics and symbols, and substantial justice is done, as it's not the case, as the Board has an obligation to uphold the ordinances as written.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 4-1** (Mrs. MacKay).

5. Christopher M. & Sarah K. Ward (Owners) 79 West Groton Road (Sheet D Lot 312) requesting the following: 1) special exception for a major home occupation to allow an indoor hydroponics farm contained within a shipping container; and the following variances: 1) to exceed maximum size of home occupation floor area, 300 square feet permitted, 320 square feet proposed, 2) to allow use in a detached accessory building, where it is required that the home occupation be carried on strictly within the principal building, 3) to allow a major home occupation that will change the external residential character of the property, and 4) to have exterior storage or display related to the home occupation. R40 Zone, Ward 5.

Voting on this case:

Gerry Reppucci  
Kathy Vitale  
J.P. Boucher  
Mariellen MacKay  
Rob Shaw

Chris Ward, 79 West Groton Road, Nashua NH. Mr. Ward said that this is a unique proposal, and said that his application is very thorough and detailed. He said they formed a small company, Oasis Springs Farm, and the idea is to grow year round produce. He said that 90% of vegetables in New Hampshire are shipped here from California or Mexico.

Mr. Ward said they'd be grown hydroponically, between 600 and 1,000 heads of lettuce per week. He said instead of plants growing in soil, the roots are in water, and they get their nutrients through that. He said that they're all grown inside in a shipping container, lighting, temperature, humidity is all controlled. He said that pesticides are not used on the plants, and everything grows faster than outdoors, and it's a healthy way to grow produce. He said that they will focus on restaurants to sell them to, or maybe produce wholesalers, possibly the Nashua School District, and high-end restaurants. He said that they could grow lettuce, kale, leafy vegetables, but not tall plants or ones with vines.

He said that the container is made by Freight Farms, out of Boston. He said it is a standard 8'x40' shipping container. He

said that they offer a lot of support to get the project going. He said that the unit can even be moved, there is some flexibility.

Mr. Ward said that they would be the ones delivering the produce in their minivan. He said it shouldn't have any effect on property values. He said that there will be no customers coming on site, occasionally there may be a pickup truck coming once a week, but it would be sporadic. He said that there would be no employees, it's just family members working there.

Mr. Ward said that for visual impact, he showed pictures of the area, and there are many trees surrounding the container, on three sides. He said he didn't even think that anyone could see it, and if it's painted dark green, it would blend right in with the trees. He said that he can place it on concrete piers, four of them, which is much less disturbance on the property than a concrete pad. He said that the container would be raised a little off the ground, so there would be proper drainage. He said that every effort will be made so that the container will not stand out. He said that his application is very complete for any additional questions from the Board.

Ms. Vitale said that in the application, it's noted that the property could have three of these units, but only one is being asked for now.

Mr. Ward said he doesn't know what the future holds, but there is room for one or two others. He said he's aware of the impact and time that one unit will have, but isn't sure how much time and other factors will be for more than one, but if there is an expansion, he'd come back to the Board. He said that the hope is to expand, but right now it's unknown.

Ms. Vitale asked about any trucks coming to pick up the produce.

Mr. Ward said that the plan right now is that they would be delivering in their minivan. He said that if someone has a small enough vehicle to fit down their driveway and turn around, they'd look into that. He said that right now, he hasn't talked to anyone with that small of a truck, and no one would park on the street.

Ms. Vitale asked if any trucks need to come to support the business.

Mr. Ward said that everything that they'd be ordering would be packages, such as seeds, nutrients, and it would be from UPS, maybe once or twice a month. He said only small trucks.

Mr. Reppucci asked how much noise it would make.

Mr. Ward said the only noise it makes is from the mini-split A/C unit on the side, it's a small one, and would be no louder than a window A/C unit for your house, and is very confident that it would be quiet.

Mr. Shaw asked about the height of the container.

Mr. Ward said it is 9½ feet tall.

Mr. Boucher asked about the power going to the unit.

Mr. Ward said he would have to run a new circuit from the house, and has already contacted the Building Department about it, and it looks like it can be done with an underground line from the garage.

**SPEAKING IN FAVOR:**

Michael Milani, 21 Sunapee Street, Nashua, NH. Mr. Milani said that it is an innovative idea, and it has a lot of thought behind it, and it should be supported.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Mr. Reppucci to approve the variance application as advertised on behalf of the owner, with all the variance requests considered collectively. He said that the variances are needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

Mr. Reppucci said that the request would be within the spirit and intent of the ordinance, it's noted that the size of shipping containers is a fixed area of 320 square feet, and

there is no reasonable way that the container can be used within the principal structure.

Mr. Reppucci said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, the Board finds that this type of business is beneficial to the community, and substantial justice is served to the owner.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MOTION** by Mr. Reppucci to approve the special exception on behalf of the owner as advertised. Mr. Reppucci stated that the use is listed in the Table of Uses.

Mr. Reppucci said that the use will not create undue traffic congestion or unduly impair pedestrian safety, testimony was that there will be inconsequential traffic.

Mr. Shaw said that the use will not overload public water, drainage or sewer or other municipal systems, water usage for the project will be extremely low.

Mr. Reppucci said that by testimony, the applicant states that they will comply with the special regulations, and the use will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals or welfare of the residents.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MISCELLANEOUS:**

**REGIONAL IMPACT:**

The Board determined that there are no cases that have Regional Impact.

**REHEARING REQUESTS:**

None.

**MINUTES:**

4-12-16:

4-26-16:

5-10-16:

**MOTION** by Mr. Reppucci to approve the above-listed three sets of Minutes as presented, waive the reading, and place them in the permanent files.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**ADJOURNMENT:**

Mr. Reppucci called the meeting closed at 8:23 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing